



FH

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MPA/172330

PRELIMINARY RECITALS

Pursuant to a petition filed February 24, 2016, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Division of Health Care Access and Accountability in regard to Medical Assistance, a hearing was held on March 25, 2016, at Medford, Wisconsin.

The issue for determination is whether the petitioner is entitled to medical assistance reimbursement to remove a panus that occurred because of gastric bypass surgery.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED], M.D.

Division of Health Care Access and Accountability
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner is a resident of Taylor County.
2. The petitioner had gastric bypass surgery on June 9, 2015.

3. Since her bypass surgery, the petitioner's weight has fallen from 348 to 223 pounds. She is still losing weight.
4. The petitioner has developed a large panus because of her weight loss.
5. During the gastric bypass surgery, the petitioner also had a large ovarian cyst removed. This led to a symptomatic incisional hernia above the umbilicus where the cyst was extracted. The hernia has a loop of bowel within it, which has become progressively more painful.
6. The petitioner's panus puts anterior strain on her abdominal wall. There is a significant chance that the hernia will recur after it is repaired if the panus is not removed.
7. On February 1, 2016, the petitioner with the Marshfield Clinic requested authorization for surgery to remove her panus.

DISCUSSION

The petitioner requests authorization under Wis. Admin. Code, § DHS 107.06(2), for removal of a panus that occurred because she lost over 100 pounds after gastric bypass surgery. The relevant criteria for determining whether this request is necessary are found in § DHS 107.02(3)(e) (e), which requires the division to consider the following factors:

1. The medical necessity of the service;
2. The appropriateness of the service;
3. The cost of the service;
4. The frequency of furnishing the service;...
6. The extent to which less expensive alternative services are available;...

The key factor is "medical necessity," which is defined in the administrative code as any MA service under chapter HFS 107 that is:

- (a) Required to prevent, identify or treat a recipient's illness, injury or disability; and
- (b) Meets the following standards:
 1. Is consistent with the recipient's symptoms or with prevention, diagnosis or treatment of the recipient's illness, injury or disability;
 2. Is provided consistent with standards of acceptable quality of care applicable to the type of service, the type of provider, and the setting in which the service is provided;
 3. Is appropriate with regard to generally accepted standards of medical practice;
 4. Is not medically contraindicated with regard to the recipient's diagnoses, the recipient's symptoms or other medically necessary services being provided to the recipient;
 5. Is of proven medical value or usefulness and, consistent with s. HFS 107.035, is not experimental in nature;
 6. Is not duplicative with respect to other services being provided to the recipient;
 7. Is not solely for the convenience of the recipient, the recipient's family, or a provider;
 8. With respect to prior authorization of a service and to other prospective coverage determinations made by the department, is cost-effective compared to an alternative medically necessary service which is reasonably accessible to the recipient; and
 9. Is the most appropriate supply or level of service that can safely and effectively be provided to the recipient.

Wis. Admin. Code, § DHS 101.03.

Besides these laws, the department has drafted guidelines in 2014 for when it will approve a panniculectomy. The pannus must hang below the level of the pubis and either cause chronic intertrigo

that last at least three months or prevent or profoundly impair activities of daily living such as showering or using the toilet properly. In addition, if bariatric surgery causes the loss of weight, the panus should not be removed until at least 18 months after the surgery and the person's weight has been stable for at least the previous six months. *ForwardHealth Update*, No. 2014-01.

The petitioner had gastric bypass surgery on June 9, 2015, and continues to lose weight. Because the surgery was within the last 18 months and she continues to lose weight, the department denied her request. She contends there are extenuating circumstances. According to her physician, she had a large ovarian cyst removed during her gastric bypass surgery. This led to a symptomatic incisional hernia above the umbilicus where the cyst was extracted. The hernia has a loop of bowel within it, which has become progressively more painful. Her panus puts anterior strain on her abdominal wall, which her physician says creates a significant risk that the hernia will recur after it is repaired if the panus is not removed.

I assume that the petitioner's physician is knowledgeable, but the policy specifically states that a panniculectomy is not covered "in conjunction with hernia repair, unless the member meets the above-stated criteria for panniculectomy." *Id.* She does not meet the criteria because her surgery was less than a year ago and she continues to lose weight. If her physician disagrees with the policy, he must convince the department to change it because, unless there is clear evidence to the contrary, I, as a medical layman, assume that the policy is based upon sound science.

CONCLUSIONS OF LAW

The department correctly denied the petitioner's request for a panniculectomy because the petitioner has not shown by the preponderance of the credible evidence that it is medically necessary.

THEREFORE, it is

ORDERED

The petitioner's appeal is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 10th day of May, 2016

\sMichael D. O'Brien
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on May 10, 2016.

Division of Health Care Access and Accountability